

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

April 19, 2016

Mr. Andy Slavitt  
Acting Administrator  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Acting Administrator Slavitt:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is continuing its oversight of the Patient Protection and Affordable Care Act (PPACA) to ensure that it is being implemented properly and tax dollars are spent appropriately. Specifically, the committee is concerned that the Centers for Medicare and Medicaid Services (CMS) is failing to ensure that tax credit payments are in the accurate amounts and going to the correct individuals.

The PPACA created a refundable tax credit, the Advanced Premium Tax Credit (APTC), to help eligible individuals and families with low or moderate income pay for health insurance purchased through a Health Insurance Marketplace.<sup>1</sup> Specifically, the APTC provides an advanced tax credit to offset the cost of premiums. To receive this credit, individuals must meet certain eligibility requirements, including annual household income, and file a tax return.<sup>2</sup> Instead of individuals waiting to claim the credit through their Federal tax returns, the APTC allows for the provider to be paid directly, lowering the individual's monthly premium.<sup>3</sup> CMS is responsible for reviewing, approving, and generating any financial assistance payments made to Qualified Health Plans (QHP), including the APTCs, for the Federal and State-based marketplaces.<sup>4</sup>

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<sup>1</sup> 26 U.S.C. § 36B.

<sup>2</sup> 26 C.F.R. 1.36B-2 (2013).

<sup>3</sup> 42 U.S.C. § 18082 (a)(3).

<sup>4</sup> Department of Health and Human Services Office of Inspector General, *CMS Could Not Effectively Ensure That Advance Premium Tax Credit Payments Made Under The Affordable Care Act Where Only for Enrollees Who Paid Their Premiums*, December 2015, available at: <http://oig.hhs.gov/oas/reports/region2/21402025.pdf>

Based on recent Inspector General reports, however, it appears that CMS has been slow to implement permanent processes to ensure accurate APTC payments, and has either failed or refused to implement IG recommendations to improve data quality and oversight over the APTC payments. CMS' apparent mismanagement and lack of oversight has exposed taxpayer dollars to waste and fraud. CMS has not developed a permanent process for approving APTC payments and is currently using an interim process to approve financial assistance payments. CMS officials are pilot-testing an automated payment process, but that process is reportedly well behind schedule.

In the past few months, the Department of Health and Human Services (HHS) Office of Inspector General (OIG) has issued a couple of reports, which have been critical of CMS' role in implementing and managing APTC payments.<sup>5</sup> In its August 2015 report, the OIG revealed that CMS was unable to properly verify applicants' eligibility for the program. For example, the OIG found several instances where social security numbers were not validated, citizenship and annual household income was not verified properly, and family size was not determined correctly. Further, CMS was unable or unwilling to resolve inconsistencies between information individuals inputted in applications and information the federal government had on file. HHS OIG recommended that CMS take action to improve internal controls related to verifying eligibility, re-determine the eligibility of the sample applicants, and improve procedures related to resolving inconsistencies. CMS concurred with these recommendations.

Additionally, in its December 2015 report, HHS OIG revealed that due to CMS' lack of reliable processes and lack of data-sharing, federal funds may be at risk. CMS relied on the QHP issuers to verify that enrollees paid their monthly premiums and confirm that the APTC payment information was correct. Because CMS receives payment information on an aggregate basis rather than enrollee-by-enrollee, CMS was unable to verify amounts requested. One reason this is particularly troubling is that "QHP issuers are required to submit their monthly template to CMS before they verify that enrollees have not paid their portion of the monthly QHP premium."<sup>6</sup> HHS OIG also found that despite the IRS' responsibility to reconcile CMS-authorized APTC payments, CMS does not share APTC payment data with the IRS when making these payments. Without permanent and reliable processes and sharing data with the IRS, CMS cannot ensure that APTC payments are made in the correct amounts or going to the individuals who qualify for them.

As a result of these findings, HHS OIG recommended that CMS establish policies and procedures to calculate APTC payments without relying exclusively on QHP issuers' attestations that enrollees have paid their premiums. HHS OIG also recommended that once the automated payment process is implemented, CMS consult with the IRS to explore sharing APTC payment data to verify the data reported. CMS concurred with the first recommendation, but did not acknowledge the second recommendation. In a briefing with Committee staff, the Treasury Inspector General for Tax Administration (TIGTA) indicated that the Internal Revenue Service

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<sup>5</sup> Department of Health and Human Services Office of Inspector General, *CMS Could Not Effectively Ensure That Advance Premium Tax Credit Payments Made Under The Affordable Care Act Where Only for Enrollees Who Paid Their Premiums*, December 2015, available at: <http://oig.hhs.gov/oas/reports/region2/21402025.pdf>.

<sup>6</sup> *Id.*

(IRS) did not concur with a similar recommendation made to them to share data with CMS.<sup>7</sup> The Committee is concerned that two federal agencies that are responsible for these payments are refusing to implement commonsense recommendations that would strengthen controls over taxpayer dollars.

Even more recently, TIGTA released a report highlighting additional issues regarding APTC payments. TIGTA identified errors in the IRS financial accounting and reporting of APTC related fund expenditures.<sup>8</sup> TIGTA discovered a major programming error, which would have led to a \$447 million overstated balance in the IRS' APTC account. If left undetected, this overstatement would have resulted in a misstatement of the FY 2015 IRS financial statements refundable credits in excess of tax liability account. The report discusses additional steps that are needed to ensure that APTC payments are accurate.<sup>9</sup> A similar report released by TIGTA on May 29, 2015, found that when CMS sent the IRS the Exchange Periodic Data (EPD) for 2014, CMS failed to send 1.7 million of the 4.2 million Federal Exchange enrollment records. Further, the IRS did not have data for individuals in six of the 15 State Exchanges.<sup>10</sup>

These reports reveal that CMS is continuing to struggle to implement permanent processes and internal controls to ensure accurate APTC payments. So that we may appropriately evaluate and address the issues raised by the OIG reports, please contact committee staff to schedule a briefing by May 3, 2016. Further, we request responses to the following questions in writing by no later than close of business on May 3, 2016:

1. Have you implemented all of the recommendations made by TIGTA, HHS OIG, and GAO that CMS concurred with?
  - a. If so, please provide specific details on how each one has been implemented.
  - b. If not, please explain why and if you intend to address the concerns and recommendations that were made.
2. CMS did not acknowledge HHS OIG's second recommendation in the December 2015 report. Please provide a detailed explanation as to why CMS did not concur with this recommendation.
3. Please give a detailed explanation regarding how the automated payment system will work and how it differs from how payments are currently being handled.
  - a. Please provide the status of the new automated policy-based payment process.

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<sup>7</sup> Committee staff briefing with TIGTA, February 2, 2016.

<sup>8</sup> Treasury Inspector General for Tax Administration, *Affordable Care Act: Controls Accounting for the Premium Tax Credit Should Be Improved*, March 2, 2016, available at: <https://www.treasury.gov/tigta/auditreports/2016reports/201613021fr.pdf>

<sup>9</sup> *Id.*

<sup>10</sup> Treasury Inspector General for Tax Administration, *Affordable Care Act: Interim Results of the Internal Revenue Service Verification of Premium Tax Credit Claims*, May 29, 2015, available at: <https://www.treasury.gov/tigta/auditreports/2015reports/201543057fr.pdf>.

4. How does the APTC process differ in a Federally Facilitated Marketplace compared to a State Exchange?
5. How does CMS oversee the APTCs for individuals that are enrolled in State Exchanges?
6. What is the status of a permanent automated policy-based payment process for the State Exchanges?

If you have any questions, please contact Brittany Havens or Jessica Donlon of the majority committee staff at (202) 225-2927.

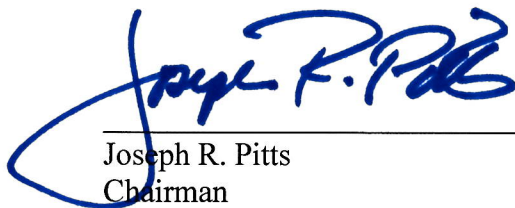
Sincerely,



Fred Upton  
Chairman



Tim Murphy  
Chairman  
Subcommittee on Oversight  
and Investigations



Joseph R. Pitts  
Chairman  
Subcommittee on Health